



**Federal Communications Commission
Washington, DC 20554
27 July 2004**

PROCEEDING: MB Docket No. 04-232 Proposed Rulemaking

I am writing in reference to the proposed rulemaking requiring broadcast stations to record and retain all programming between 6:00a.m. and 10:00p.m. We understand the intent of this proposal is to enhance the Commission's ability to enforce its indecency rules, however we would like to bring to the Commission's attention, the substantial burden and possible hardship that such a ruling could impose, particularly on small broadcasters. In addition, it is possible that conforming to the procedures proposed may expose broadcasters to liability for violations of contractual obligations with respect to material owned by third parties in which the station may have the right to broadcast a satellite feed but not record it. Abiding by the rulemaking also may subject broadcasters to liability for copyright infringement by causing broadcasters to record copyrighted material without having been granted a mechanical license to do so by the copyright owner.

We are still doing research to determine the financial implications but it is clear that there are several areas of expense which have not been budgeted for:

- **Hardware**

We are a small AM station and currently are not equipped to record our broadcast, except for very small increments of time such as an air check. All of the recording devices we have are used during the broadcast itself to generate programming. To comply with the proposed rulemaking we would have to purchase hardware and incur engineering costs to integrate the hardware in the manner necessary to record for the specified durations.

We have been trying to acquire certain hardware to ensure our ability to operate in the black. A hardship would be imposed if we had to divert the funds we are trying to accumulate for our intended needs to satisfy the technical requirements of this proposed rulemaking

- **Recording Media**

Without having an automated capacity to record the programming we broadcast, a manual solution to record 16 hours of programming daily would require 1,040-1,440 cassette tapes to cover 90 days.

- **Labor**

Additional labor would be required to operate the device and change tapes. Since we operate with a skeleton staff after 5:00p.m., additional expense would be involved by either incurring overtime or needing to add additional staff.

- **Documentation**

To capture and store broadcast content, we would have to revisit our processes procedures, Both from the technical process standpoint as well as the record keeping and media recycling functions. We would incur additional expense in rewriting and reprinting our Operations Manual and procedural guides. We would also incur expense in training new resources and loss of productivity during retraining of current staff. An analog solution is probably the cheapest approach and still would be of considerable- additional expense. A digital solution is unaffordable at this time.

- **Storage Space**

As mentioned earlier, we are a small station. The use of the square footage of our facility is currently at its highest efficiency. Because we are not automated and we program vintage music, we need all of the space we have to house our library of 33rpm and 45rpm records. In order to store the additional media required for retention, we would be forced to rent space in a storage facility, again, an item not in our current budget.

Based on the above-mentioned factors relating to recording and retaining 6am-10pm programming, it would be even more expensive and impose more of a hardship if we were required to record 24 hours per day or retain the materials for longer than 90 days.

To require EVERY broadcast facility in the nation to record and retain all of this material is a substantial waste of time, resources and energy, since only a fraction of them actually encounter complaints requiring a broadcaster to produce content in question. Given that, we feel it is unreasonable to impose such a burden so broadly. We fear that it will hurt small broadcasters even more and will instantiate further the advantage that conglomerates with substantial resources already have, it is a threat to the survival of small broadcast operators.

- **Liability**

After consulting our legal representation, it is currently unclear how rulemaking would impact our contractual limitations regarding paid programming, that we broadcast. Upon discussion with our satellite subscription services, one is of the opinion that our agreement does not allow us to record their broadcast stream. The other has yet to respond to our questions about the implications to our contractual agreements.

Much more study is necessary in order to determine the true costs and liabilities of implementing this new proposed rulemaking.

Thank you for the opportunity to make comments regarding the proposed rulemaking. We strongly hope that you will study these issues carefully, reconsider the matter and come up with a wiser solution for enhancing the Commission's ability to enforce its decency standards. The diversity of American airwaves is at stake.

Respectfully Yours,

Meredith C. Beal